

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUSSELL OLSEN,)	
)	
Claimant,)	IC 2005-522025
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
HK CONTRACTORS,)	AND RECOMMENDATION
)	
Employer,)	
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	Filed October 21, 2008
CORPORATION,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Idaho Falls on June 17, 2008. Claimant, Russell Olsen, was present in person and represented by Paul Curtis of Idaho Falls. Defendant Employer, HK Contractors (HK), and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by Monte Whittier of Boise. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and came under advisement on July 26, 2008.

ISSUES

The issues to be resolved are:

1. Whether the condition for which Claimant seeks benefits was caused by the

- industrial accident;
2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury or condition;
 3. Claimant's entitlement to additional medical care;
 4. Claimant's entitlement to permanent partial impairment;
 5. Claimant's entitlement to retraining; and
 6. Claimant's entitlement to permanent disability in excess of impairment.

ARGUMENTS OF THE PARTIES

Claimant suffered an industrial accident on September 15, 2005, injuring his left knee. He alleges his knee continues to be symptomatic and asserts entitlement to additional medical treatment and other benefits for his industrial accident.

Defendants acknowledge that Claimant suffered an industrial accident resulting in a relatively mild left knee injury which resolved within a few months. Defendants provided medical and time loss benefits and maintain that Claimant's injury fully resolved and he is not entitled to any additional medical or other benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Roger Wood taken at the April 17, 2008, hearing;
2. Claimant's Exhibits 1 through 8 admitted at hearing;
3. Defendants' Exhibits A through K admitted at the hearing; and
4. The post-hearing deposition of Gregory West, M.D., taken by Defendants on June 17, 2008.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

After having considered the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1979. He was 28 years old and lived in Idaho Falls with his parents at the time of the hearing. Claimant completed the 11th grade, but did not graduate from high school and has not obtained a GED.

2. In 2005 Claimant commenced working as a laborer for HK laying sewer pipe and water lines. Claimant testified that while at work at approximately 10:00 a.m. on September 15, 2005, three 24 inch sewer pipes rolled into and struck Claimant's left knee and side, and rolled over him. Claimant reported the incident to his supervisor who told him to seek medical attention at Community Urgent Care Center. Claimant testified he then left work and drove himself to the care center where his left knee was x-rayed and put in a brace. Claimant was given crutches and pain medications and was referred to orthopedist Gregory West, M.D. The care center records establish that Claimant reported there at 5:20 p.m.

3. Claimant was off work for approximately one week and received workers' compensation benefits.

4. On September 22, 2005, Claimant presented to Dr. Gregory West, who prescribed a knee brace, ordered a left knee MRI, and released Claimant to light-duty work with restrictions. Radiologist Peter Vance, M.D., reported the MRI revealed normal menisci, normal cruciate ligaments, and a mild sprain of the medial collateral ligament. Dr. Gregory West examined and treated Claimant periodically until December 2005. Claimant was only partially compliant with Dr. West's instructions and restricted the range of motion of his knee brace contrary to Dr. West's

5. Claimant testified he then worked at a gas station, but his knee hurt too much to stand, so he quit after one month. Thereafter Claimant drove a pilot car for six months.

6. Claimant testified he stole money from his parents and was incarcerated for forgery for about 10 months commencing in August 2006. After his release from prison Claimant returned to driving a pilot car for about six months.

7. At hearing Claimant testified on direct examination that prior to his 2005 knee injury at HK he was in good health and had no car accidents, workers' compensation claims, or knee problems. However, Claimant acknowledged on cross-examination that he was involved in car accidents in 1995 and 2002, and filed three prior worker's compensation claims for injuries including low back strain, eye irritation, and a broken hand.

8. At hearing Claimant testified on direct examination that he had topped out his prison sentence. However he acknowledged on cross-examination that he was still on probation for grand theft, burglary, and injury to a child and that his probation will continue until 2017.

9. At hearing Claimant testified on direct examination that he received no treatment for his left knee while in prison. The prison medical records show that he never complained of any knee pain but rather reported he was generally in good health and without physical complaints except for depression.

10. At hearing Claimant asserted that sometime after December 20, 2005, he went to the office of Dr. Gregory West seeking further care and that Dr. West refused to see him. In his

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

deposition, Dr. Gregory West expressly disputed Claimant's assertion.

11. At hearing Claimant testified that HK's safety manager, Roger Wood, called him after his light-duty release in October 2005, and told Claimant not to come to work because HK had no light-duty work available for him. Claimant testified HK then terminated his employment.

12. Wood disputed Claimant's account and testified that Claimant refused to fill out HK's usual accident form and refused to provide any work status report from Dr. Gregory West even though Wood repeatedly requested it. Wood testified that approximately November 3, 2005, Claimant missed a scheduled appointment with Wood and Wood then rescheduled another appointment which Claimant also missed. Wood testified that Claimant failed at least three different times to report for light-duty work after being specifically notified and advised to report for light-duty work. On the final occasion, after Wood talked with Claimant on the phone and Claimant stated he could not come to work at 10:00 a.m. because he had no transportation until 1:00 p.m., Wood rescheduled the appointment for 1:00 p.m. Wood then drove to Claimant's residence and observed Claimant's residence for two and one-half hours. Wood saw three cars parked at Claimant's residence until well after 1:00 p.m. Claimant missed the appointment and did not contact Wood to explain his absence. Wood testified HK terminated Claimant's employment for Claimant's repeated failure to report for work as directed. Claimant never requested his job back.

13. At the hearing Claimant wore a knee brace and testified that his knee hurt and the knee brace was to ease his pain. Claimant acknowledged that no doctor has directed him to continue wearing a knee brace. Dr. Gregory West repeatedly advised Claimant to get out of the knee brace in order to strengthen his quadriceps and allow normal knee range of motion.

14. Having compared the witnesses' testimony with the other evidence in the record, the

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

Referee finds that Wood is a credible witness and that Claimant is not a credible witness.

DISCUSSION

15. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

16. **Medical causation** The crux of the instant case is whether Claimant's current condition for which he seeks benefits is caused by his September 15, 2005, industrial accident. Defendants contend that Claimant has not shown that any ongoing left knee symptoms are caused by his industrial accident.

17. A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6

that events are causally related. See Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

18. Claimant asserts that his September 15, 2005, accident caused left knee pain including a medial collateral ligament tear and meniscus tear. He denies any pre-existing or subsequent left knee injury. Claimant relies upon the opinion of Henry West, D.C., that Claimant needs further medical care.

19. Chiropractor Henry West examined Claimant on April 14, 2006, and January 9, 2008, and concluded, based largely upon Claimant's self-report, that he suffered a medial collateral ligament sprain and meniscus tear due to his 2005 industrial accident. Dr. Henry West also rated Claimant's permanent impairment at 10% of the whole person, and opined that Claimant would eventually require knee surgery, probably a knee replacement, due to future arthritis. It does not appear from Dr. Henry West's reports that he reviewed the MRI of Claimant's left knee.

20. Orthopedist Gregory West reviewed the actual MRI and concluded that Claimant sustained a first degree medial collateral ligament tear—defined as a stretching injury without disruption of the ligament fibers—no cruciate ligament pathology, and no meniscus pathology. Dr. Gregory West examined Claimant periodically between September 22 and December 20, 2005, and ultimately concluded that Claimant had fully recovered from his industrial injuries, had no permanent impairment, and needed no further medical treatment due to his industrial accident. Dr. Gregory West testified that a first degree medial collateral ligament tear typically heals adequately in three weeks and is nearly asymptomatic in six weeks. He testified that Claimant's persistent wearing of a knee brace delayed his recovery but that Claimant's injury was cured at the time of his release in December 2005. He noted there would be no medical need related to the industrial

accident for Claimant to wear a knee brace at the time of hearing.

21. Chiropractor Henry West's opinion is principally based upon Claimant's questionable self-report and subjective symptoms. Orthopedist Gregory West's opinion is based upon actual review of Claimant's MRI, periodic physical examinations of Claimant, and is further corroborated by the MRI report authored by Dr. Vance. The Referee finds the opinion of orthopedist Gregory West more persuasive than that of chiropractor Henry West.

22. Claimant has not proven that any present left knee symptoms are related to his September 15, 2005, industrial accident.

23. **Additional medical care.** Having failed to prove that his present left knee condition is due to his industrial accident, Claimant has also failed to prove that any current need for medical treatment is due to his September 15, 2005, industrial accident.

24. **Permanent impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

25. Claimant herein alleges entitlement to 10% permanent impairment as found by Dr. Henry West. However; as noted above, orthopedist Gregory West has opined that Claimant suffers no permanent impairment due to his 2005 accident. For the reasons stated above, Dr. Gregory West's opinion as to Claimant's left knee condition is more persuasive than that of Dr. Henry West. Claimant has not proven he suffers any permanent impairment due to his September 15, 2005,

industrial accident.

26. **Retraining and permanent disability.** Absent a finding of permanent impairment caused by Claimant's September 15, 2005, accident, the issues of retraining and permanent disability are moot.

CONCLUSIONS OF LAW

1. Claimant has not proven that his current left knee condition was caused by his industrial accident of September 15, 2005.

2. Claimant has not proven his entitlement to additional medical care due to his September 15, 2005, industrial accident.

3. Claimant has not proven that he suffered any permanent impairment due to his September 15, 2005, industrial accident.

4. The issues of retraining and permanent disability are moot.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends the Commission adopt such findings and conclusions as its own, and issue an appropriate final order.

DATED This 17th day of October, 2008.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor
Referee

ATTEST:

/s/

Assistant Commission Secretary

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RUSSELL OLSEN,)	
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Claimant,)	
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v.)	
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HK CONTRACTORS,)	
)	ORDER
Employer,)	
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and)	
)	Filed October 21, 2008
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
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Surety,)	
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Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has not proven that his current left knee condition was caused by his industrial accident of September 15, 2005.
2. Claimant has not proven his entitlement to additional medical care due to his September 15, 2005, industrial accident.

3. Claimant has not proven that he suffered any permanent impairment due to his September 15, 2005, industrial accident.

The issues of retraining and permanent disability are moot.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 21st day of October, 2008.

INDUSTRIAL COMMISSION

_____/s/_____
James F. Kile, Chairman

Unavailable for signature

R.D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2008 a true and correct copy of **Findings, Conclusions, and Order** was served by regular United States Mail upon each of the following:

PAUL T CURTIS
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IDAHO FALLS ID 83402

MONTE R WHITTIER
PO BOX 6358
BOISE ID 83707

ka

_____/s/_____

ORDER - 2